

§ 641.730 How will the Department set and adjust performance levels?

(a) Before the beginning of each Program Year, the Department will negotiate and set baseline levels of negotiated performance for each measure with each grantee, taking into consideration the need to promote continuous improvement in the program overall, past performance, and, when applicable, the performance of similar programs.

(b) The baseline level of negotiated performance for “placement into public or private unsubsidized employment” is set at 20 percent. (OAA sec. 513(a)(2)(C)).

(c) Grantees may request adjustments from these baseline levels before or during the Program Year. Grantees may base such requests only on the factors in paragraph (d) of this section. The Department will issue guidance for negotiating adjustment requests.

(d) Adjustments to performance levels may be made based on the following conditions only:

(1) High rates of unemployment, poverty, or welfare reciprocity in the areas served by a grantee relative to other areas of the State or Nation;

(2) Significant economic downturns in the areas served by the grantee or in the national economy; or

(3) Significantly higher numbers or proportions of participants with one or more barriers to employment served by a grantee relative to grantees serving other areas of the State or Nation. (OAA sec. 513(a)(2)(B)).

(e) Grantees may seek an adjustment to their performance levels, based on the factors listed in paragraph (d) of this section, during the negotiation process or during the grant period.

§ 641.740 How will the Department determine whether a grantee fails, meets, or exceeds negotiated levels of performance?

(a) The Department will evaluate each performance indicator to determine the level of success that a grantee has achieved and take the aggregate to determine if, on the whole, the grantee met its performance objectives. The aggregate is calculated by combining the percentage results achieved on

each of the individual measures to obtain an average score.

(b) Once the aggregate is determined, if a grantee is unable to meet 80 percent of the negotiated levels of performance for the aggregate of all of the performance measures, that grantee has failed to meet its performance measures. Performance in the range of 80 to 100 percent constitutes meeting the levels for the performance measures. Performance in excess of 100 percent constitutes exceeding the levels for the performance measures.

(c) A national grantee in a State must meet 80 percent of the negotiated level of performance for its national measures, and it must meet the measures negotiated for the State in which the national grantee serves.

(d) The Department will impose the sanctions outlined in section 514 of the OAA and in §§ 541.750, 541.760, 541.770 and 541.790 when a grantee fails to meet overall negotiated levels of performance.

(e) When a grantee fails one or more measures, but does not fail to meet its performance measures in the aggregate, the Department will provide technical assistance on the particular measures that a grantee failed.

(f) The Department will provide further guidance through administrative issuances.

§ 641.750 What sanctions will the Department impose if a grantee fails to meet negotiated levels of performance?

(a) Grantees that fail to meet negotiated levels of performance will be subject to the sanctions established in section 514 of the OAA. The sanctions that apply are grantee specific (*i.e.*, national grantee, national grantee in a State, or State grantee). These sanctions range from requiring grantees to submit a corrective action plan and receive technical assistance, to competition of part of the grant funds, to a competition of all of the grant funds.

(b) Until the Department establishes baseline levels for customer satisfaction measures, grantees that only fail the customer satisfaction performance measure, but meet or exceed all other performance measures, will not be subject to sanctions. The Department will

provide additional instructions for how it will measure customer satisfaction.

§ 641.760 What sanctions will the Department impose if a national grantee fails to meet negotiated levels of performance under the total SCSEP grant?

(a) The Department will annually assess the performance of each national grantee no later than 120 days after the end of a Program Year to determine if a national grantee has failed to meet its negotiated levels of performance. (OAA sec. 514(e)(1)).

(b) If the Department determines that a national grantee has failed to meet its negotiated levels of performance for a Program Year, the national grantee must submit a corrective action plan not later than 160 days after the end of that Program Year. The plan must detail the steps the national grantee will take to improve performance. The Department will provide technical assistance related to performance issue(s). (OAA sec. 514(e)(2)(A)–(e)(2)(B)).

(c) If a national grantee fails to meet its negotiated levels of performance for a second consecutive Program Year, the Department will conduct a national competition to award an amount equal to 25 percent of that organization's funds in the following full Program Year. (OAA sec. 514(e)(2)(C)). The Department reserves the right to specify the locations of the positions that will be subject to competition. The poor performing grantee that had its funds competed is not eligible to compete for the same funds.

(d) If a national grantee fails to meet its negotiated levels of performance for a third consecutive Program Year, the Department will conduct a national competition to award an amount equal to the full amount of that organization's remaining grant after deducting the amount awarded in paragraph (c) of this section. (OAA sec. 514(e)(2)(D)). The poor performing grantee that had its funds competed is not eligible to compete for the same funds.

(e) To the extent possible, the competitions outlined in paragraphs (c) and (d) of this section will be conducted in such a way as to minimize the disruption of services to participants. (OAA sec. 514(e)(2)(C)).

(f) The organizations selected to receive a grant through the national competitions discussed in paragraphs (c) and (d) of this section must continue to provide service to the geographic areas formerly served by the national grantee(s) whose positions were the subject of the competition. (OAA sec. 514(e)(2)(D)).

§ 641.770 What sanctions will the Department impose if a national grantee fails to meet negotiated levels of performance in any State it serves?

(a) Each national grantee must be assessed on the performance of the projects it operates within any State. Such an assessment may lead to a finding that the national grantee has failed to meet negotiated levels of performance for its projects in a particular State. A national grantee's failure to meet performance measures in a State may be mitigated by justifying the failure, taking into consideration the adjustments permitted under section 513(a)(2)(B) of the OAA, or size of the project. (OAA sec. 514(e)(3)(A)).

(b) If the Department determines that there has been a failure to meet negotiated levels of performance within a State, the Department will require a corrective action plan and may take other appropriate actions, including transfer of the responsibility for the project to other grantees or providing technical assistance. (OAA sec. 514(e)(3)(B)).

(c) The Department will take corrective action if there is a second consecutive Program Year of failure by a national grantee operating within a particular State. Such corrective action may include transfer of, or a competition for, all or a portion of the project(s) of the national grantee in the State to another entity. Entities that were the subject of this corrective action will not be eligible to receive the funds of the transfer or to compete. (OAA sec. 514(e)(3)(C)).

(d) If there is a third consecutive Program Year of failure, the Department will conduct a competition for all of the funds available to a national grantee for operations within a particular State. Entities that are the subject of this corrective action will